

U.S. PATENT APPLICATION SERIAL NO.: 10/023,178
AMENDMENT D AND REQUEST FOR A TELEPHONE INTERVIEW

ATTORNEY DOCKET NO.: 3968.043

REMARKS

Review and reconsideration of the Office Action dated February 18, 2005 is respectfully requested.

Applicants amended the claims to refer to "base matrix" and "another matrix" (their original form).

Applicants note that it is the Examiner's position that a person skilled in the art and knowing Hornstein and Ashurst will carry out the steps **c-e** of the method of the present invention.

Applicants note that there is no disclosure in either of the cited references that the flavor **composition** in the other matrix **is changed to correspond to the composition of the base matrix.**

Applicants believe that the pending set of claims are novel in view of the Hornstein and Ashurst references because neither of the references taken alone or in combination teach: 1) the step of introducing a flavor mixture which has been introduced into a first matrix **into a second matrix** (step **c**); 2) **comparing** the two headspace analyses (steps **d** and **e**); and 3) **changing** (adjusting) the flavor mixture in the second matrix in order to **match** the flavor properties of the first matrix (also step **e**).

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There is no disclosure in either of the cited references that the flavor composition in the other matrix is changed to correspond to the composition of the base matrix.

Thus, even if the references are combined, they will fail to teach steps c-e of the present set of claims.

The novelty of the present invention lies in **comparing** the flavor composition of a first and second matrices, adjusting the flavor of the second matrix to match the headspace analysis of a first matrix containing a flavor mixture having desirable properties.

None of the cited references recognizes the importance of optimizing the match of headspace analysis **by adjusting the composition of flavor components in two different matrices**. Thus, the in absence of the recognition that the optimization is a result effective variable, a person skilled in the art cannot render this process as obvious by looking at the teaching of the Hornstein and Ashurst references.

By means of the present inventive process, it is possible to apply a flavor profile of a food to another food. The content of each individual flavor compound of an aroma is adapted by using correction factors, so that a completely new flavor formula results which is **tailor-made to the new product**. Surprisingly, using this inventive process, flavor adaptation can be carried out considerably faster and more goal-oriented, than by a purely flavoristic/sensory approach.

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Applicants' arguments can be found below.

In addition, Applicant is filing herewith a Request for Telephone interview with the Examiner prior to the issuance of a future Office Action in this case. Applicants respectfully request that the Examiner does not ignore the Request.

Office Action:

Turning now to the Office Action in greater detail, the paragraphing of the Examiner is adapted.

Claims Rejection (Formalities)

The Examiner rejects Claims 1-6 and 8 under 35 USC 112, first paragraph as failing to comply with the written description requirement. The Claim(s) contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Examiner states that the Applicant does not specifically provide support for "first" and "second" and it is not clear what is encompassed by these terms.

The position of the Examiner can be found on page 2 of the Office Action.

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Applicants note that the original set of claims includes the terms "base matrix" and "another matrix". During the response to the Final Office Action, Applicants amended the claims by replacing the term "base matrix" with the term "first matrix" and the term "another matrix" with the term "second matrix". A person skilled in the art would realize that these terms are not adding anything extra to the claims, but only clarifying the invention.

In view of the Examiner's position, and in order to avoid any further formalities rejections, Applicants returned the original terms "base matrix" and "another matrix" back into the claims.

Accordingly, withdrawal of the objection is respectfully requested.

Obviousness:

The Examiner rejects Claims 1-6 and 8 under 35 USC 103(a) as being obvious over Hornstein in view of Ashurst.

The position of the Examiner can be found on pages 2-3 of the Office Action.

Applicants respectfully traverse for the following reasons:

Applicants note that it is the Examiner's position that a

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person skilled in the art and knowing Hornstein and Ashurst will carry out the steps **c-e** of the method of the present invention.

Applicants note that there is no disclosure in either of the cited references that the flavor composition in the other matrix is changed to correspond to the composition of the base matrix.

Applicants believe that the pending set of claims are novel in view of the Hornstein and Ashurst references because neither of the references taken alone or in combination teach: 1) the step of introducing a flavor mixture, which has been introduced into a first matrix **into a second matrix** (step **c**); 2) **comparing** the two headspace analyses (steps **d** and **e**); and 3) **changing** (adjusting) the flavor mixture in the second matrix in order to **match** the flavor properties of the first matrix (also step **e**).

The novelty of the present invention lies in **adjusting the** flavor composition of a second matrix so that the headspace analysis of the second matrix matches the headspace analysis of a base matrix containing a flavor mixture having desirable properties.

Applicants note the Examiner's indication that Hornstein teaches the **combination of separate batches**. The Examiner's

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indication is correct, on page 72, at the end of the first full paragraph, of the reference can be found the teaching that the isolates and fractions from separate **batches are combined prior to further fractionation and analysis.**

But the above teaching does not have anything to do with the present invention, which requires that the flavor of the base (first) matrix (having desired properties) be analyzed **prior to combining with another** (second) matrix, **comparing both results**, and then **adjusting** the results of the second matrix to match the results of the first matrix. In this way the second matrix will have the desired properties for which the first matrix was selected.

Applicants note that the Ashurst reference was cited to show flavor manufacture based on analysis of the flavor materials.

Applicants note that the reference fails to overcome the deficiencies of the Hornstein reference. The reference **also** fails to teach: 1) the step of introducing a flavor mixture, which has been introduced into a first matrix **into a second matrix** (step c); 2) **comparing** the two headspace analyses (steps d and e); and 3) **changing** (adjusting) the flavor mixture in the second matrix in order **to match** the flavor properties of the

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first matrix (also step e).

Regarding Claim 2, the cited references further fails to teach: 1) calculating a correction factor from the peak area percentages of the analyses of the base matrix and the other matrix, 2) calculating the numbers of moles of the individual flavor compounds in the flavor mixture, and 3) on the basis of the correction factors determined in step g) adapting the flavor mixture to the other matrix.

Regarding Claim 5, the cited references further fail to teach that the peak area values determined by gas chromatography for the flavor compounds in the headspace over the base matrix and for the flavor compounds in the headspace over the other matrix are used to form a quotient for calculating the correction factors.

None of the cited references recognizes the importance of optimizing the match of headspace analysis **by adjusting the composition of flavor components in two different matrices.** Thus, the in absence of the recognition that the optimization is a result effective variable, a person skilled in the art cannot render this process as obvious by looking at the teaching of the Hornstein and Ashurst references.

By means of the present inventive process, it is possible to apply a flavor profile of a food to another food. The content

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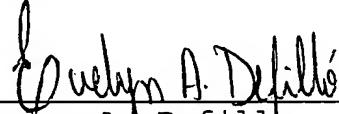
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of each individual flavor compound of an aroma is adapted by using correction factors, so that a completely new flavor formula results which is tailor-made to the new product. Surprisingly, using this inventive process, flavor adaptation can be carried out considerably faster and more goal-oriented, than by a purely flavoristic/sensory approach.

In view that none of the references taken alone or in combination teach all the steps of the independent claims, Applicants respectfully request that the Examiner withdraw the rejection.

Favorable consideration and early issuance of the Notice of Allowance are respectfully requested.

Respectfully submitted



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Date: May 18, 2005

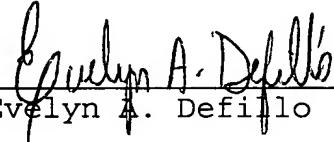
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CERTIFICATE OF MAILING AND AUTHORIZATION TO CHARGE

I hereby certify that the foregoing AMENEDMENT D AND REQUEST FOR A TELEPHONE INTERVIEW for U.S. Application No. 10/023,178 filed December 17, 2001, was deposited in first class U.S. mail, with sufficient postage, addressed to: Attn: Mail Stop: Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on **May 18, 2005**.

The Commissioner is hereby authorized to charge any additional fees, which may be required at any time during the prosecution of this application, except for the issue fee, without specific authorization, or credit any overpayment, to Deposit Account No. 16-0877.



Evelyn A. Defillo